

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. INU-00-2
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**ORDER REQUESTING COMMENT, GRANTING
INTERVENTION, AND GRANTING PERMISSION TO APPEAR
TO OUT-OF-STATE ATTORNEY**

(Issued June 27, 2000)

On January 28, 1997, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc. (U S WEST), into the interLATA market. The proceeding was preliminarily identified as Docket No. 47 U.S.C. § 271(d)(2)(B).

On June 24, 1997, the Board issued an order setting the procedure it intended to follow when U S WEST made a filing with the Board prior to making an Iowa § 271 application with the FCC.

U S WEST filed a § 271 application with the Board on January 31, 2000. The Board issued an order on February 10, 2000, opening an investigation docket, identified as Docket No. INU-00-2, to review the application. In addition to its application, U S WEST requested a schedule be set that would allow the Board to consider all aspects of the docket contemporaneous with the Regional Oversight Committee (ROC) operational support systems (OSS) test and a modification of the

Board's June 24, 1997, order which required prefiled testimony and an adversarial hearing.

The Board sought and received comment from other participants concerning the request by U S WEST that the Board conduct a series of workshops addressing each aspect of § 271 instead of the procedure previously set out, which included the filing of testimony, a hearing for the purpose of cross-examination, and post-hearing briefs.

The response from the participants was overwhelming that workshops on specific checklist items could be very helpful. However, most responses indicated that the workshops should take place after a presentation of evidence by U S WEST and an evidentiary hearing of some kind.

In a filing dated May 4, 2000, U S WEST encouraged the Board to consider a multi-state process for purposes of its review of track A (competition issues)¹, various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations. The multi-state proposal filed by U S WEST set out suggested workshop topics and indicated that, as proposed, it would include "the filing of testimony, the questioning of witnesses under oath, a discovery process, and an exhaustive exploration of issues."

The Board has considered the concept of a multi-state process for purposes of its review of U S WEST's § 271 application. Through discussions with the Idaho

¹ See 47 U.S.C. § 271(c)(1)(A).

Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, and the Utah Public Service Commission, a draft procedural schedule has been designed that covers most of the concepts that the Board finds necessary in this review. Additionally, the draft procedural order establishes workshops, with dates and the subject matter, for each workshop. The draft procedural order is attached to this order as Attachment A.

The Board seeks comment from the participants to this proceeding regarding the multi-state proposal filed by U S WEST on May 4, 2000, as the concept is more fully described and detailed in the draft procedural order prepared in coordination with the regulatory agencies of Idaho, Montana, North Dakota, and Utah. One question where the Board seeks comment is: if the Board uses a multi-state proceeding for issues that are common to all U S WEST states, how would that affect the participation of the smaller competitive companies?

Additional petitions for intervention have been filed by Sprint Communications Co. L.P. (Sprint), and Telecommunications Resellers Association (TRA). A petition for late intervention was filed by New Edge Network, Inc. d/b/a New Edge Networks (New Edge) indicating that New Edge just recently became aware of this proceeding. The Board will grant the interventions of Sprint, TRA, and New Edge.

A request was filed by Sprint that Julie Thomas Bowles, a member in good standing of the Bar of the state of Kansas, be permitted to represent Sprint in this proceeding, pursuant to 199 IAC 7.2(7)"e." Local counsel has been retained for

purposes of service. The request to permit appearance by an out-of-state attorney is granted by the Board.

IT IS THEREFORE ORDERED:

On or before one week from issuance of this order, participants are urged to comment on the multi-state proposal filed by U S WEST, and as more fully detailed in the draft procedural order attached to this order as Attachment A.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 27th day of June, 2000.

PROCEDURAL ORDER Draft 06/27/2000

A. INTRODUCTION

1. On February 8, 2000, U S WEST Communications, Inc. ("U S WEST") submitted materials to the states of Idaho, Iowa, Montana and Utah to initiate proceedings under Section 271 of the Telecommunications Act of 1996.

2. U S WEST can enter the interLATA market in these in-region states once the Federal Communications Commission ("FCC") determines that U S WEST meets the requirements of Section 271 in each state independently. Although the FCC will make the ultimate decision about U S WEST's interLATA entry, the FCC is required by statute to consult with state commissions before making any determination of U S WEST's satisfaction of the requirements of Section 271. See 47 U.S.C. § 271(d)(2)(B). The FCC has stated that "[i]n order to fulfill this role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications"² The FCC promises to "consider carefully state determinations of fact that are supported by a detailed and extensive record. . . ."³

3. The Idaho Public Utilities Commission, Iowa Utilities Board, North Dakota Public Service Commission, Montana Public Service Commission, and the Utah Public Service Commission ("the Commissions") will conduct a joint process to consider aspects of Section 271 through collaborative workshops.

² See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, Memorandum Opinion and Order, ¶30 (rel. Aug 19, 1997) ("*Ameritech Michigan Order*").

³ *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region InterLATA services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 18 (rel. Oct. 13, 1998) ("*BellSouth Louisiana II*").

B. PROCEDURAL CONSIDERATIONS

4. PARTICIPATION: The participating state commissions expect this multi-state workshop process to narrow and resolve many 271 issues, and therefore encourage full participation in this multi-state collaboration. Participation will be determined by the individual states.

5. LESS CONTROVERSIAL CHECKLIST ITEMS: Based on US West's assertion that substantial agreement and progress on checklist items numbers 3, 7, 8, 9, 10, and 12 (Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Pages Listings, Number Administration, Signaling/ Assoc. Databases, and Dialing Parity) has been reached among parties in other US West states, and that any outstanding issues should be able to be discussed and resolved among parties without necessitating an in-person workshop, the Commissions agree to develop the record on these checklist items through written filings. Such a process would include the filing of US West's case, discovery, comment cycles, and either a joint resolution filed by the parties, or a report from staff (developed with the assistance of the Outside Consultant) to each commission based on the written record. To the extent that agreement cannot be reached on these checklist items, mini-workshops on isolated topics may be scheduled or issues may be deferred to the state commissions for resolution. The remaining checklist items would be addressed through a series of three workshops as outlined below.

6. WORKSHOP RECORD: The workshops shall be transcribed by a court reporter. Some settlement discussions may occur off of the record. The court reporter shall also maintain a continuing list of exhibits introduced as evidence in the workshops. Participants to the proceeding shall provide the Outside Consultant (see paragraph 9) with

a complete e-mail list of all persons to whom materials distributed in this combined docket should be distributed; service shall be electronic only, unless a participant is unable to receive electronic distribution. Any participant who is unable to receive service by e-mail shall be responsible for providing all participants with alternative instructions for service, including an express service account number if overnight delivery is requested. Pre-filed testimony and legal pleadings shall be filed with each of the state commissions, according to the rules of that state. The record from the workshops shall be considered a part of the official record of the proceeding in each of the four states.

7. WRITTEN TESTIMONY: U S WEST and all participants filing pre-filed testimony shall file such testimony or comments under oath according to the schedule set forth below. All parties are strongly encouraged to be as forthcoming as possible in the pre-filed materials, such as testimony or comments. Additional testimony will only be considered to the extent that it was not available at the time that original materials were filed. The Commissions recognize that there will be circumstances when evidence is newly discovered or arises for the first time in rebuttal thereby requiring parties to present new evidence at the workshops; however, these circumstances should be the exception.

8. QUESTIONING OF WITNESSES: Although the collaborative workshops will be less formal than adjudicative proceedings, all parties have the opportunity to question witnesses at each workshop. All witnesses shall offer testimony and explanation under oath during the course of the workshops.

9. DISCOVERY: All parties have the ability to submit relevant, focused written discovery according to the schedule set forth below. All discovery and non-confidential responses shall automatically be served upon all parties to each individual state's

proceeding. A party participating in only one state or responding to data requests that are specific to a particular state may limit service of responses and responsive materials that the party has designated as confidential to parties in that state's proceeding pursuant to paragraph 12 of this procedural order. Any party to the proceeding that has a discovery dispute shall raise the dispute in a brief letter to the decision-maker identified by the Commissions as responsible for overseeing the discovery process. If the discovery dispute persists, the decision maker shall have oral argument (either in person or via telephone) on the issue within three (3) business days from receipt of the letter, which argument shall be transcribed by a court reporter and included as a part of the official record of the proceeding.

10. OUTSIDE CONSULTANT: The states shall collectively select and retain one Outside Consultant or consulting firm to coordinate the workshops. The consultant shall be retained by the state commissions collectively, but shall be funded by U S WEST. The Outside Consultant's responsibilities shall be to:

- a. Coordinate and run the collaborative workshops;
- b. Maintain a complete record of the proceeding including issue resolution;
- c. Assist commission staff members from each state to draft a report of the agreed upon and unresolved issues in each workshop;
- d. Manage the discovery; and
- e. Keep all parties to the workshop proceedings on task and timely moving toward resolution.

10. STATE STAFF: Staff from each state may participate in each of the workshops. Staff shall have advisory, not advocacy, responsibilities; however, if desired, a commission may identify separate adversarial staff, which may not have *ex parte* contacts with advisory staff regarding the multi-state workshops. Staff shall have the opportunity to submit discovery according to the schedule set forth below and to ask pertinent questions of parties during the course of the workshops.

12. UNRESOLVED ISSUE RESOLUTION PROCESS: If the parties are unable to reach agreement on an issue, then the issue shall be considered “Unresolved.” Once an issue is considered to be in agreement during the workshop process, it will not be reopened unless new information or evidence, not previously available to the parties, justifies reopening the issue. Each Commission shall have independent authority to resolve each unresolved issue in the manner they deem appropriate. For example, a Commission could resolve an issue based on the record from the workshops or, on its own motion or the motion of a party, through the taking of additional evidence, or some combination thereof.

13. TREATMENT OF CONFIDENTIAL MATERIAL: Confidential material will be protected from disclosure via the processes used by each state for protecting confidential or trade secret information in their state. All parties to the proceeding shall abide by the terms and conditions of each Protective Order.

C. SCHEDULE AND TIMELINESS

14. The following schedule shall apply to this proceeding unless good cause arises to alter the schedule. Parties to the proceeding shall make all conceivable good

faith efforts to keep to the current schedule. Modifications will be made as necessary as determined by the Outside Consultant in consultation with the Commissions and staff.

15. GENERAL DATES:

- a. June 9, 2000: U S WEST will file Statements of Generally Available Terms and Conditions (SGAT) pursuant to section 252(f) in each of the participating states and an overview of its entire 271 case, including the to greatest extent possible, identifying all evidence it intends to produce to support its case that it is now in compliance with section 271.
- b. June 2000: The Commissions retain the Outside Consultant.
- c. Each party shall have seven (7) working days to respond to and/or object to written discovery propounded upon it. Reasonable extensions of time to respond to discovery shall be extended where the circumstances warrant.

16. FILING/ COMMENTS ON CHECKLIST ITEM NUMBERS 3, 7, 8, 9, 10, & 12

- a. U S WEST's Direct Testimony: September 5, 2000
- b. Intervenor Comments: October 13, 2000
- c. All Parties Rebuttal Comments: November 3, 2000
- d. Filing of joint resolution or staff report

17. WORKSHOP NUMBER 1:

- a. Subject: Checklist Item Numbers 1 (interconnection and collocation), 11 (number portability), 13 (reciprocal compensation) and 14 (resale) as well as Section 272.
- b. U S WEST's Direct Testimony: July 31, 2000
- c. Intervenor Responsive Testimony: September 5, 2000
- d. All Parties Rebuttal Testimony: September 18, 2000
- e. Workshop Dates: October 3 to October 6, 2000
- f. Location: Salt Lake City, Utah

18. WORKSHOP NUMBER 2:

- a. Subject: Emerging Services including Line Sharing, Checklist Item Number 5, including Dark Fiber, Subloop Unbundling, Packet Switching
- b. U S WEST's Direct Testimony: October 27, 2000
- c. Intervenor Responsive Testimony: November 24, 2000
- d. All Parties Rebuttal Testimony: December 8, 2000
- e. Workshop Dates: December 18 to December 21, 2000
- f. Location: Boise, Idaho or Helena, Montana

19. WORKSHOP NUMBER 3:

- a. Subject: Checklist Item Numbers 2 (combinations), 4, and 6 (to the extent not previously covered), Public Interest (including the Performance Assurance Plan) and Track A
- b. U S WEST's Direct Testimony: January 19, 2001
- c. Intervenor Responsive Testimony: February 23, 2001

- d. All Parties Rebuttal Testimony: March 9, 2001
- e. Workshop Dates: March 26 to March 30, 2001
- f. Location: Des Moines, Iowa

20. POST-OSS TESTING EVALUATION: U S WEST's Operational Support Systems (OSS) are currently being tested under the auspices of the U S WEST Regional Oversight Committee (ROC). When the testing is complete, the Commissions will determine what process to utilize to evaluate the results of the ROC test.

21. FOLLOW-UP WORKSHOPS: Follow-up workshops on isolated topics may be necessary to complete full resolution of issues. To the extent necessary, the Outside Consultant shall work with all parties to schedule the additional workshops as necessary. It is anticipated that these follow-up workshops will be shorter in duration and more focused thereby allowing them to be scheduled shortly after the primary workshop on the checklist item has occurred.

22. REPORTS OF FINDINGS AND DISPUTES: Within twenty (20) days after each workshop and any follow-up workshops are complete, the commission staff members from each state, together with the assistance of the Outside Consultant, will prepare and submit a report of the agreed upon and unresolved issues in each workshop, identifying draft findings of fact and conclusions of law, differing views on resolution of the disputed issues and recommended findings of disputed issues. Within ten (10) days of submission of such report, the parties shall file any proposed additional or revised findings of fact, conclusions of law, and/or clarification of disputed issues. Within ten (10) days after the parties comments are submitted, the staff in consultation with the Outside Consultant shall file their reports with each of the Commissions.

23. RESOLUTION OF UNRESOLVED ISSUES: Unresolved issues shall be submitted to each Commission for its independent resolution. As stated in ¶ 12, for example, the Commissions could resolve an issue based on the record from the workshops or, on its own motion or the motion of a party, through the taking of additional evidence or some combination thereof. Each Commission shall set a process and schedule that will allow complete resolution of these issues. Parties shall at a minimum have an opportunity to file briefs and reply briefs and argue the disputed issues before each state commission.

24. REMOTE PARTICIPATION: U S WEST shall make provision for parties that do not want to travel to a workshop in a distant state to at least participate by telephone using a toll free number. To the extent reasonably practical, U S WEST will also make one site available in each fully participating state for parties to participate by videoconference. Videoconferencing will not be made available in the following circumstances:

- a. In the state that is hosting the workshop;
- b. If no parties from the state notifies U S WEST at least three weeks in advance of the workshop that it intends to participate in the workshop via video conference; and
- c. If no video conferencing equipment is reasonably available on the dates of the scheduled workshop.

Each of the commissions will work with U S WEST to identify and obtain the use of state video conferencing facilities where practical and/or less expensive than similar private facilities.

25. SUBMISSION TO FCC: Once these workshops are complete and each Commission has made a determination on unresolved issues for its state, the Commissions anticipate that the record will be sufficiently developed such that U S WEST can make its 271 filing to the FCC and the Commissions can make a reasoned recommendation pursuant to Section 271(d)(2)(B) of the Act.

DATED this _____ day of June, 2000.